

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0076

**Withholding Tax
For the Month ended 12/31/97**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated January 23, 1999 protested the penalty assessed and states the Department has not looked past the expired due date of the return, and has not taken into consideration the significant facts and circumstances surrounding the taxpayer during the period of time that the return was to be filed. The taxpayer and its related companies were involved in an IRS audit of their 1996 Federal Income Tax Returns from November 1997 until early 1998. The filing of Form WH-1 was overlooked in the pandemonium of taxpayer's defense. Taxpayer states the last week of February and the first week of March were spent assembling information required to defend filing positions for IRS Counsel. Ultimately, the taxpayer prevailed, and the Indiana returns prepared prior to the initial filing date were mailed.

ISSUE

I. **Tax Administration** – Penalty

DISCUSSION

At issue is whether the taxpayer was negligent in reporting and remitting withholding tax.

Taxpayer states it was involved in the defense of its IRS audit from November 1997 until early 1998 and the late filing resulted from the disruption of the ordinary trade and business of the taxpayer.

The taxpayer was billed for the late filing of its WH-1 for the month of December 1996. As provided by statute, a federal postmark is used by the Revenue Department in determining whether a tax payment is timely. In addition, taxpayer in letters dated December 3, 1998 and January 23, 1999 states "the returns prepared prior to the initial filing date were mailed".

Taxpayer itself states the returns were prepared prior to the initial filing date. The department finds the taxpayer was negligent in failing to mail the return timely.

The Department finds no reasonable cause exists, therefore, the request for penalty waiver is denied.

FINDING

Taxpayer's protest is denied.